



# City of NORFOLK

C: Dir., Department of Public Works

To the Honorable Council  
City of Norfolk, Virginia

December 15, 2015

From: David Ricks, Director of Public Works

**Subject:** Acceptance of a bid for a long term lease agreement with the City of Norfolk for property located at 434 St. Pauls Boulevard

Reviewed:

Ronald H. Williams, Jr., Deputy City Manager

**Ward/Superward:** 2/7

Approved:

Marcus D. Jones, City Manager

**Item Number:**

**IB-1**

I. **Recommendation:** Adopt Ordinance

II. **Applicant:** City of Norfolk, Department of Public Works

III. **Description:**

This agenda item supports development of the new Downtown Norfolk Transit Center ("DNTC") by accepting a bid for a long term lease agreement with the City of Norfolk ("City") for occupancy at 434 St. Pauls Boulevard to operate predominately as a bus transfer facility for connecting public bus network and also serve as a transit customer service center.

IV. **Analysis**

Construction of the DNTC is now complete. For design and construction of the DNTC, the City is the overall sponsor of the Project and the City will retain ownership of the building and site. This ordinance accepts a bid on a long term lease of facility (25 years with 15 year renewal terms) in accordance with Va. Code § 15.2-2100, which requires bidding on leases of public property for terms in excess of five years. The Lessee would occupy the site and staff the DNTC with customer service personnel to offer passenger assistance in bus arrivals and departures, ticket sales, and security support to offer safe and secure transfer within the public bus and transit network. The DNTC lease with the City allows the Lessee to occupy the building and maintain the building and surrounding plaza including an adjacent bus staff and patron parking lot under the proposed 25-year term (with a 15-year renewal terms). Target timing to open the facility for public use is the first week of January 2016.

V. **Financial Impact**

There will be no impact to the City Budget for this ordinance.

**VI. Environmental**

There will be no environmental impact for this ordinance.

**VII. Community Outreach/Notification**

A complete public outreach review of the site for public use and bus operations has been shared with stakeholders who were engaged in providing input to the site design and facility amenities at the St. Pauls Boulevard site. In addition, public notification for this agenda item was conducted through the City's agenda notification process.

**VIII. Board/Commission Action**

N/A

**IX. Coordination/Outreach**

This letter and ordinance have been coordinated with the Department of Public Works and the City Attorney's Office.

Supporting Material from the City Attorney's Office:

- Ordinance
- Exhibit A – Terms and Conditions

Form and Correctness Approved:

Contents Approved:

By

Martha V. McGinn  
Office of the City Attorney

By

DEPT.

NORFOLK, VIRGINIA

**ORDINANCE No.**

AN ORDINANCE ACCEPTING THE BID SUBMITTED BY \_\_\_\_\_ FOR A LONG TERM LEASE AGREEMENT, WITH A TERM OF TWENTY-FIVE YEARS WITH A RENEWAL TERM OF FIFTEEN YEARS, FOR PROPERTY KNOWN AS THE DOWNTOWN NORFOLK TRANSIT CENTER.

— — —

WHEREAS, pursuant to the provisions of Section 15.2-2100, et seq., of the Code of Virginia, 1950, as amended, the City of Norfolk has invited bids for a long term lease agreement, with a term of twenty-five years with a renewal term of fifteen years, for property known as the Downtown Norfolk Transit Center located at 434 St. Pauls Boulevard, subject to the terms and conditions set forth in Exhibit A attached hereto; and

WHEREAS, the requirements of Sections 15.2-2101 and 15.2-2102 of the Code of Virginia, 1950, as amended, have been met and the Council has carefully considered all bids submitted; now, therefore,

BE IT ORDAINED by the Council of the City of Norfolk:

Section 1:- That \_\_\_\_\_ being the highest responsible bidder, its bid for a long term lease agreement, with a term of twenty-five years with a renewal term of fifteen years, for property known as the Downtown Norfolk Transit Center located at 434 St. Pauls Boulevard, in accordance with the terms and conditions set forth in Exhibit A attached hereto, is



hereby accepted.

Section 2:- That pursuant to Section 15.2-2104 of the Code of Virginia, 1950, as amended, the Council has determined that a bond in the sum of \$100.00 shall be executed in favor of the City of Norfolk by the person or entity to whom this lease agreement is awarded.

Section 3:- That the City Manager is authorized to execute a Lease Agreement, containing the terms and conditions set forth in Exhibit A, on behalf of the City of Norfolk and to do all things necessary and proper to carry out its terms.

Section 4:- That this ordinance shall be in effect from and after thirty (30) days from the date of its adoption.

**EXHIBIT A**  
**TERMS AND CONDITIONS**

**I. PROPERTY**

A. The City hereby leases to Lessee and Lessee leases from City the Property for the "Term" (as defined below), and pursuant to the terms and conditions set forth herein.

B. The City grants to Lessee, its employees, agents, licensees, contractors, passengers and invitees, the nonexclusive right in common with the City for the use of the common areas on the Property. The "Common Areas" include the sidewalks, plazas, hallways, stairways, public bathrooms, common entrances, lobbies, platforms, other public portions of the Property, including the pipes, ducts, conduits, wires and appurtenant meters and equipment serving the Premises. The "Common Areas" do not include the Park and Ride Lot on the Property. The City grants Lessee exclusive use and control of the Park and Ride Lot. The City will not grant, assign, convey or otherwise give a third party the right to use the Common Areas without the prior written consent of Lessee, such consent not to be unreasonably withheld. The Premises and the land on which they are located are collectively referred to as the "Property".

**II. DEFINITIONS**

In addition to other terms defined in other parts of this Agreement, the following capitalized terms shall have the following meanings:

- A. "Norfolk Right-of-Way Excavation and Restoration Manual" shall mean the manual that stipulates the requirements that contractors must follow when conducting excavation work and the manner in which they must restore the work area within the public right-of-way in the City of Norfolk, approved by Norfolk City Ordinance No. 40,778, and adopted by Norfolk City Council on July 16, 2002.
- B. "Norfolk Bus System" shall mean the Lessee/Norfolk bus commuter public transportation system in which one or more busses are operational on fixed routes throughout the City of Norfolk and Hampton Roads.
- C. "The "Property" shall mean the site located at 434 St. Pauls Boulevard conveyed by the ordinance Norfolk City Council Ordinance No. \_\_\_\_\_ and on \_\_\_\_\_, 2015, which includes, but is not limited to, the Downtown Norfolk Transit Center, Plaza and Park and Ride Lot.
- D. "Special Events" shall mean those events occurring within the public rights of way and controlled by the City through a permit process, including, but not limited to runs, walks, festivals, parades, and races



- E. "Occupied City Property" shall mean City property that is currently being utilized or contains City facilities.
- F. "Landscape Grounds Maintenance" shall mean all tasks required to maintain the grounds of the City's assigned responsibilities of the DNTC as outlined in this Agreement. This includes litter removal, mowing of turf and ditches; weeding, mulching, watering, fertilization, pesticide applications, installation of plantings (including replacement and/or renovation plantings) and the trimming of ornamental plantings and trees.

### **III. TERM AND TERMINATION**

A. The term of this Lease shall be for twenty-five (25) years ("Initial Term") commencing on a date mutually agreed upon by City and Lessee, provided an occupancy permit has been issued for the Premises ("Commencement Date"). Unless sooner terminated, this Agreement will automatically renew for one (1) additional fifteen (15) year term at the conclusion of the Initial Term.

B. On or about the Commencement Date, City shall execute and deliver to Lessee a Declaration of Commencement ("Declaration") in the form attached hereto as **Exhibit B**. Lessee shall promptly execute such Declaration confirming the Commencement Date and return such to City.

### **IV. RENT**

Lessee shall pay rent in the amount of One Dollar (\$1.00) per Term ("Rent"). Receipt of the Rent is hereby acknowledged by City.

### **V. USE**

Lessee may occupy and use the Premises for any lawful purpose reasonably related to the operation of the Norfolk Bus System and Lessee's business operations, including ticketing, waiting area for passengers, related mail, package, baggage, and express services and office, mechanical and/or engineering facilities, connecting bus service and operations incidental to Lessee's business. All uses set forth in this Section shall collectively be referred to as "USE".

### **VI. TRAFFIC SIGNAL COORDINATION**

A. Baseline timing plans will assure safe, efficient and reliable traffic operation to maintain a consistent bus schedule for the Norfolk Bus System. Lessee and the City shall meet as necessary to establish the timing of the traffic signals adjacent to the DNTC near the entry and exit of the new transit center.

1. When traffic signal timing adjustments are necessary due to changing traffic conditions, such as new development and new

traffic signal installation, the City will provide the intersection vehicular counts required for the development of any new timing plans. Lessee will work cooperatively with the City in evaluating the Norfolk Bus System operational impacts to vehicular and pedestrian traffic in the DNTC to accommodate the proposed Lessee changes and select the optimal operations that meet the needs of both Parties.

2. Except in emergency situations, once the signals are coordinated, the City shall not adjust signal time that will have any impact on Lessee operations without prior consultation with Lessee. In emergency situations, the City shall attempt to notify Lessee as circumstances permit.

B. In the event of emergency situations, Lessee and the City shall comply with the directions of the proper authority in charge of the emergency situation.

C. During Special Events, as defined herein in Section II.B., traffic signal timing plan changes shall be coordinated between Lessee and the City prior to the event.

## **VII. ACCESS TO DNTC**

A. City Access. In a non-emergency situation, if access to the DNTC is required, the City shall notify Lessee of the need to conduct work at the DNTC site. Access within the DNTC shall be permitted by Lessee within five (5) business days after the initial written request by the City or issued immediately, in the event of an emergency.

B. Private Utility Access. A private utility company or its contractor must receive an access permit from Lessee prior to receiving a permit from the City. Lessee shall respond to an access permit application at the DNTC site within five (5) business days after a written request, and assist the City and private utility company with scheduling any installation, maintenance or repair. The City shall notify Lessee and require Lessee's prior approval, when a right-of-way permit request is submitted that may affect Lessee's bus operations. At a minimum, the City shall include the following permit requirements before any such permit is issued:

1. Any work performed must minimize the interference with the operation or maintenance of the DNTC, and adhere to the standards identified in the Norfolk Right-of-Way Excavation and Restoration Manual.
2. Any work performed shall safeguard against damage to Lessee facilities and security for the payment of repair to damaged facilities may be required.
3. The private utility company shall be responsible for any claims or injury to any persons or property resulting from the negligence or



willful misconduct of its employees, agents or contractors in the installation, operation, maintenance, replacement, repair, relocation, removal or use of any of the utilities. Any contractor performing work shall be required to furnish a certificate of insurance satisfactory to the City and naming the City and Lessee as an additional insured as its interest may appear.

- a. Excavation on or adjacent to the DNTC bus loop or walkways should be performed as to minimize the disruption and disturbance and to allow safe and reliable Lessee Bus System schedules. Such excavation work may only be initiated after a permit is secured from Lessee and detailed work plans may be required to follow excavation guidelines established by Lessee for both excavation and site restoration.

## **VIII. RELOCATION OF THE DNTC**

A. Lessee cannot effectively operate the Norfolk Bus System without the DNTC or a comparable facility. Subject to City approval, Lessee shall have the right to relocate, at its cost and expense, any portion of the DNTC due to a proposed alteration of the Property by the City. Any proposed alteration to the Property by the City shall not interfere with the operation and maintenance of the Norfolk Bus System. Lessee shall provide relocation plans, drawings and documents ("Relocation Plans") to the City. For a period of ninety (90) days, the City shall have the opportunity to review and approve or disapprove such Relocation Plans. If the City has concerns with the Relocation Plans, the City shall provide written comments to Lessee describing those concerns within the applicable review period. The Parties shall then use their best efforts to agree on modifications to the Relocation Plans that are acceptable to both Parties. If the Parties are unable to agree on acceptable modifications, then either Party may submit the matter to mediation pursuant to Section XIV of this Agreement. After approval of the Relocation Plans, no revisions or modifications may be made to the Plans without prior approval of the City. Upon completion of the final version of the Relocation Plans, Lessee shall provide the City with five (5) copies of such Relocation Plans for review to ensure incorporation of all agreed upon changes to the Relocation Plans.

If the City at any time determines that a public purpose causes the relocation of the DNTC, Lessee shall cooperate with the City to relocate the DNTC to a new and comparable transit facility that meets Lessee's downtown transfer center operational requirements at the City's sole cost and expense. If possible, relocation will occur within one (1) year of notice, or such additional time as the Parties may agree to in writing and is necessary to for the City to plan, design, acquire any necessary easements, obtain necessary permits and approvals, fund and construct the facilities, in order to minimize disruption to the Norfolk Bus System.



Lessee will not be required to vacate the Property until the new transit facility has been completed or a temporary transit facility, acceptable to Lessee, is made available. In the event of a temporary relocation, the City will relocate Lessee to the temporary transit facility and, thereafter, to the new transit facility at the City's sole cost and expense. In the event of relocation, this Agreement will remain in full force and effect, but will be amended to redefine the terms "Property" and "DNTC", as necessary.

## **IX. DISPLAYS, BANNERS AND SPECIAL EVENTS**

### **A. Displays and Banners**

#### **1. Within the DNTC Site**

No displays or attachments, unrelated to the Norfolk Bus System operations as determined by Lessee, will be placed within, over, or on facilities within the DNTC without Lessee and City approval. This includes, but is not limited to light poles, traffic signal poles, bus station platforms, and pedestrian signal poles and fencing.

Lessee will comply with all City ordinances for advertising within the DNTC and adjacent Park and Ride lot.

### **B. Special Events**

1. Lessee and the City shall work collaboratively on the City's Special Events.
2. The City shall advise Lessee of permit requests for Special Events crossing or directly adjacent to the DNTC.
3. Lessee and the City shall also work collaboratively for any reasonable improvements which can be made in the revenue collection and ticket vending process during Special Events that will reasonably result in more efficiently servicing a higher ridership demand during Special Events.
4. Any Special Event anticipated to cause the DNTC to be interrupted or impeded for an extended period or involve major changes to the base Norfolk Bus System schedule, or an associated feeder bus schedule must have the approval of both the Lessee CEO and City Manager.

## **X. MAINTENANCE**

### **A. General**

1. Subject to the terms of this Agreement, Lessee shall maintain the DNTC building, grounds, and site plaza. Except for repairs associated with an emergency or imminent service cessation, if immediate repairs are not performed, Lessee will obtain a permit, as required by the City for other maintenance activities on intersections or other areas shared with vehicular and pedestrian traffic, including City-owned parcels.
2. Notwithstanding any provision herein to the contrary and if necessary, Lessee will obtain a right-of-way permit as required by the City in connection with any maintenance or repair work on improvements constructed upon the DNTC site prior to commencing said work. In performing said work, Lessee shall abide by the requirements of the permit issued that are not preempted by state or federal law or regulation.
3. The City and Lessee shall use their best efforts to avoid disruption of traffic and Norfolk Bus System service for maintenance and other work, to the extent practicable, Lessee shall perform work within the DNTC site during off peak traffic times to minimize disruptions to traffic. To the extent practicable, the City shall perform work within or adjacent to the DNTC site during off peak traffic times and off peak Norfolk Bus System ridership times to minimize disruptions to Lessee System operations. In case of an emergency or urgent circumstance, the Party performing the repair shall immediately notify and cooperate in good faith with the other Party.
4. All warranties acquired by the City (builder, manufacturer, or otherwise) in conjunction with the design and construction of the DNTC will be assigned to the Lessee or maintained by the City for the benefit of the Lessee.

### **B. MAINTENANCE RESPONSIBILITIES**

#### **a. General**

1. Lessee maintenance responsibilities extend to the DNTC at 434 St. Pauls Boulevard and the adjacent Park and Ride lot.
2. Notwithstanding any provision herein to the contrary, Lessee's maintenance responsibilities include the maintenance of all DNTC facilities at 434 St. Pauls



Boulevard. These facilities include, but are not limited to, all appurtenances, pedestrian walkways, roof foundations downspouts and drainage and connection to City drainage trunk lines, Lessee IT communication and phone system, overhead canopy foundations patron seating walls and landscaping. Also included are retaining walls used to retain materials or landscaping, retaining wall drains, bus station platforms, and all station platform elements, including but not limited to canopies, drinking fountains, benches, outdoor lighting including the Park and Ride lot, safety and security camera system, bus route and way finding signage, landscaping, trash collection, snow and ice removal, and ticket vending machines.

3. The City will be responsible for all structural maintenance and repairs to the Property, including the roof and foundation of the DNTC, which shall be necessary to maintain the Property in a safe, dry and tenantable condition. The City will be responsible for installing and maintaining adequate bird control measures.
4. Lessee shall be responsible for the overall appearance of all transit-related vehicles, structures, cabinets, stations, and surfaces within the DNTC.
5. In the event of any accident or otherwise unforeseen occurrence during maintenance, the City shall provide emergency personnel to assist with clearing the site and creating a safe operating environment through coordination with Lessee Bus Operations and Lessee Safety personnel.
6. The City reserves the right to repair or abate any City-owned or Lessee-owned equipment at the DNTC having the potential to affect public safety as may be necessary. The City shall attempt to exercise such right in such a manner as shall not occasion injury or inconvenience operation of Lessee bus operations. Lessee shall, at the City's election, pay for direct costs incurred by the City in performing said repairs resulting from Lessee-owned equipment within thirty (30) days after such election by the City; provided that the City has given Lessee prior written notice of the need for such repairs and Lessee has not timely initiated and used due diligence to complete such repairs.
7. Lessee shall remain responsible for locating and marking all underground facilities that may be affected by Lessee maintenance activities at the Property as required by

Virginia's Underground Utility Damage Prevention Act located in Virginia State Code Sections 56-265.14, *et seq.*

8. After receipt of reasonable prior written notice, Lessee shall provide an experienced contractor to remove, repair, and/or replace the DNTC sidewalk, plaza, or bus loop in the event of damage as a result of an accident or associated with an emergency repair by Lessee.

b. Signage

1. Notwithstanding any provisions to the contrary herein, Lessee shall maintain all DNTC signage inside and outside the DNTC site, including but not limited to gateway or "pylon" type signage, vicinity map and way finding, Lessee rules/regulatory signage.
2. Lessee shall maintain the City traffic signs within the DNTC pertaining to safe bus or traffic operations, including, but not limited to, "Lessee authorized vehicles only," "One Way," "Keep Right," and signs relating to pedestrian and vehicle prohibitions, and other warning signage. The City will retain the right to replace or repair any traffic, advisory, and regulatory signage within the DNTC on an emergency basis.
3. Lessee shall also maintain the DNTC signs outside of the DNTC site, including way finding or informational signage for the DNTC facilities. Such signs shall be approved by the City and Lessee will be responsible for maintenance and/or replacement of such signs.
4. The City and Lessee will jointly approve, direct removal or relocation of signs in the DNTC site. Design standards for signs shall meet both City and Lessee guidelines, including, but not limited to design review process.

c. Lighting

1. Lessee shall maintain all bus station indoor and outdoor lighting, building including outside "up" lighting and associated park and ride lighting, including the poles, luminaries, bulbs, and all other appurtenances associated with such lighting.
2. The City and Dominion Virginia Power are responsible for street lighting and any other existing or perimeter lighting, including some adjacent parking lot lighting managed by Dominion Virginia Power.



3. Except in emergency situations, maintenance of lights by either the City or Lessee shall be performed during non-operational periods or "off -peak hour" as identified by Lessee so as to minimize Lessee bus operations.
- d. Removal of Graffiti and Unauthorized Materials
1. Lessee will be responsible for the removal of graffiti, illegal signs, stickers, and other unauthorized materials on all Lessee facilities and structures that support the DNTC site, including the Park and Ride lot pursuant to Norfolk City Code Sections 27-45 and 42-10, as applicable.
- e. Fencing
1. The City of Norfolk Department of Public Works (hereinafter the "Department") shall maintain ornamental fencing installed in the City right-of-way in medians of major arterial roads that control pedestrian movements adjacent to the DNTC site.
  2. Lessee shall maintain all ornamental and chain link fencing and access gates on property managed by ownership or agreement outside of the City right-of-way but within the DNTC site . This includes fencing established to control pedestrian movement near adjacent sidewalks, curbs and streets, Park and Ride lot areas, and pedestrian crossings. Lessee shall replace any damaged fencing or gates with like kind within thirty (30) days of receiving notification of such damage and provide a safe barrier in the interim.
  3. Displays or attachments on such fencing shall follow the guidelines and approvals established under Section IX(A) of this Agreement.
- f. Snow Removal
1. The City shall maintain City street pavement, sidewalks and curbs within public right-of-way. Lessee shall be notified when the need to resurface streets near the DNTC is warranted.
  2. Lessee shall perform snow and ice removal of the entire DNTC site and Park and Ride lot and provide safe passageway to connecting streets, sidewalks and ADA ramps, and crosswalks to the nearest pedestrian street or major street arterial.

3. The City shall allow Lessee to use reasonable quantities of sand and salt from City storage facilities, as needed, to support snow and ice removal. Any out of pocket costs associated with the use of said materials by Lessee shall be reimbursed to the City by Lessee.
4. Lessee shall maintain pedestrian walkways and all pavement between crossing panels and any other paved or concrete surfaces within the DNTC. Lessee will perform patching and/or repairs within five (5) business days after written notification from the City.

g. Landscaping

1. Except as otherwise provided in this Agreement, Lessee shall provide Landscape Grounds Maintenance services within the DNTC site and adjacent Park and Ride lot.
2. Any application of herbicide conducted by or on behalf of Lessee shall be performed by a licensed applicator.

h. Storm Drainage System

1. The City and Lessee acknowledge that street flooding may occur along the DNTC site and general Downtown Norfolk area, which has the potential to interrupt Lessee bus service. The City and Lessee will maintain their current respective drainage systems to minimize the severity of occurrences.
2. The City shall maintain drainage systems within the City right-of-way, including City drainage systems that are under the DNTC and perform cleaning of structures and systems as required.
3. Lessee shall maintain under drainage systems from the DNTC site to the location that it connects to the City Storm Water System as well as any drainage piping and ditches within the DNTC. Lessee will perform routine maintenance and cleaning operations as needed to the DNTC drain systems, including, but not limited to the cutting of grass and ditch grading at the DNTC site.

i. Street Sweeping

1. The City shall perform street sweeping along City roadways near the DNTC. City Street sweeping will be performed as scheduled daily.



2. Lessee shall maintain the DNTC site and be responsible for street sweeping the DNTC bus loop, adjacent Park and Ride lot, and DNTC site plaza and walkways so as to keep it free of trash and debris.

j. Public Utilities

1. The City shall perform and oversee the maintenance and repair of its water and sewer facilities within the DNTC. The City will notify Lessee when maintenance or repairs need to be performed by the City with a minimum of fourteen (14) days prior written notice of any scheduled work. During emergency conditions, the City will notify Lessee immediately.
2. Lessee shall support and provide the City access to such public facility locations within the DNTC to performance necessary maintenance and repairs.

k. DNTC Park and Ride Lot

1. Lessee shall maintain all Park and Ride lot associated with the DNTC and all facilities within the Park and Ride lot, including but not limited to pavement, curb, lighting (not otherwise maintained by a third party), landscaping, trash and litter cleanup.

l. DNTC Plaza Area.

1. Lessee shall maintain the plaza area, including but not limited to pavement, overhead canopies, brick pavers, seating and landscape walls, benches, lighting, and perimeter fencing, trash and litter cleanup.

## **XI. SUBLEASE AND ASSIGNMENT**

A. Lessee shall not assign or sublet the whole or any part of the Premises without City's prior written consent, which consent shall not be unreasonably withheld, delayed or conditioned. This provision requiring City's consent shall not apply, and Lessee shall be permitted to assign or sublet to any entity whose management and operation is indirectly or directly controlling, controlled by or under common control with Lessee or if such assignment or subletting is due to or arises out of any judicial or legislative action or mandate, and any such transfers shall not be deemed an assignment or subletting. If any sublease or assignment shall occur, then such assignee shall be required to secure any insurance required under this Agreement.

## **XII. CONSTRUCTION OF ADDITIONS OR ALTERATIONS**

A. The design and construction of any additional enclosed structures on the Property or alterations involving structural changes to the DNTC shall be subject to the review and approval of the City. Minor construction activities, such as the installation of additional lighting, seating, and/or fencing, will not be subject to the review and approval of the City. For such construction activities subject to this provision and prior to commencing the construction of any such additions or alterations to DNTC and/or Property, Lessee shall deliver to the City for review and comment five (5) sets of plans, drawings and documents detailing the additions or alterations ("Plans"). The City will notify Lessee within (30) days of its receipt of such Plans whether it will comment on such Plans. If so, then the City shall have an additional thirty (30) days to review and approve or disapprove such Plans. If the City disapproves such Plans, the City shall, within the applicable review period, provide written comments to Lessee explaining the reasons therefor. The parties shall meet within thirty (30) days after Lessee's receipt of the City's written disapproval to negotiate in good faith to develop Plans acceptable to both parties. If the parties are unable to agree to changes to the Plans that are acceptable to both within a reasonable period of time, then the matter may be mediated as provided under this Agreement. Upon completion of the final version of the Plans, the Lessee shall provide the City two (2) copies of such Plans in a digital format, if available. In the event that any proposed addition or alteration by Lessee requires the relocation or removal of facilities on Occupied City Property, Lessee shall be solely responsible for the cost and expense of relocating such facilities.

## **XIII. BREACH AND DEFAULT**

A. Events of Default. The occurrence of the following shall constitute a material breach of this Agreement.

- i. The failure of a Party to timely perform a material obligation and/or duty under this Agreement within sixty (60) days after written notice of such failure from the other Party detailing the nature of the failure; provided, however, where any such event of default reasonably cannot be cured within the sixty (60) day cure period, the Party in default shall not be deemed to be in breach under this Agreement if it commences in good faith to cure such event of default within such period, thereafter diligently pursues such cure to completion, and cures such event of default within one hundred eighty (180) days after delivery of written notice of the event of default.

B. Remedies. The Parties recognize that a breach of this Agreement may cause irreparable injury to the aggrieved Party. Therefore, the Parties agree that in addition to the Parties' right to seek resolution of unresolved controversies and the right to such other relief, the aggrieved Party may apply to the appropriate court of law to enjoin the violation



of this Agreement or seek such other injunctive relief, equitable remedies, or interim measures as may be appropriate under applicable law.

C. Lessee agrees that in no event shall Lessee, because of a breach of this Agreement or the expiration of a Term, have the right to cause the cessation of the Norfolk Bus System unless the same is ordered by a court of law. The City agrees that in no event shall the City, because of breach of this Agreement or the expiration of a Term, have the right to withhold or offset, in whole or in part, any payments due to Lessee for the provision of transportation services or to otherwise prevent Lessee from using the Property unless the same is ordered by a court of law.

#### **XIV. DISPUTE RESOLUTION**

A. The Parties hereto shall make every reasonable effort to settle any claim or controversy arising under this Agreement through good faith negotiation for a period of ninety (90) days after written notice from the Party (detailing the claim or controversy) or such longer time as is otherwise expressly provided for in this Agreement or agreed to by the Parties.

B. Any claim or controversy arising under this Agreement that is not resolved through good faith negotiation of the Parties as provided herein may be submitted to mediation by either Party providing the other written notice of such Party's intent to seek mediation. Such election shall be exercised by written notice to the other Party. If a disinterested mediator cannot be located, then this matter shall also be settled in a court of law.

#### **XV. RISK OF LIABILITY, INDEMNITY AND INSURANCE REQUIREMENTS**

##### **A. Indemnity Agreement**

Lessee shall indemnify, protect, defend, and hold harmless the City and its representatives from and against all losses and claims, demands, suits, actions, payments and judgments arising from personal injury or otherwise, brought or recovered against the City by reason of any negligence of Lessee, its agents, contractors or employees, in operation and maintenance of the Property, except for any claim asserted or liability imposed upon the City that arises or is related to negligence by the City. Such indemnification by Lessee includes any and all expense, legal and otherwise, incurred by the City or its representatives in the defense of any claim or suit.

##### **B. Insurance**

Lessee shall maintain insurance coverages set forth in 1 through 7 below, or, in the alternative, Lessee shall self-insure in accordance with all applicable laws and regulations relating to self-insurance, under an industry standard self-insurance program for similar Lessee System operations, maintenance, future construction and facilities, which self-insurance may



be in fully or partially in lieu of, or as a supplement to, the insurance coverages set forth in 1 through 7 below.

All liability policies (for which coverage Lessee has not elected to self-insure as provided above, either in full or in part) will contain, when feasible, endorsements that designate the City as "Additional Named Insured" and will be written in an occurrence form unless otherwise specifically approved by the City, or unless such coverage is not reasonably available via normal commercial insurance market sources. As set forth above, Lessee may use self-insurance plans as a supplement to, or in lieu of, purchased insurance policies. The City and Lessee will annually review the self-insurance and insurance policies coverage, terms and conditions, as well as the anticipated costs of such plans and policies. Said policy or policies shall include a severability of interest provision. Lessee shall notify the City of pending cancellations or material changes in coverage within 10 days after Lessee is notified of such changes. If Lessee fails to either self-insure or to maintain insurance as set forth in this Agreement, then the City shall have the right, but not the obligation, in addition to pursuing any other remedies for breach, to take such actions as appropriate to obtain and/or maintain the coverages described at Lessee's sole expense.

1. **COMMERCIAL GENERAL LIABILITY AND RAILROAD LIABILITY and UMBRELLA LIABILITY INSURANCE.** Commercial General Liability Insurance ("CGL") and, if necessary, commercial umbrella insurance with a limit of not less than \$2,000,000 each occurrence, \$5,000,000 annual aggregate. CGL insurance and shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal injury and liability assumed under insured contract.
2. **PROFESSIONAL/ERRORS & OMISSIONS LIABILITY INSURANCE.** Lessee shall maintain during the life of this contract such Professional and, or, Errors and Omissions Liability Insurance as shall protect Lessee against legal liability as a result of alleged negligence or errors and omissions, excluding personal injury, which may arise from the performance of the Lessee's duties and obligations under this Agreement whether such operations be by Lessee or Lessee's staff (but expressly excluding any subcontractor). The minimum acceptable limits of liability to be provided by such insurance shall be at least \$1,000,000 each Incident/Aggregate.
3. **PRIVACY AND BREACH OF INFORMATION LIABILITY INSURANCE.** Lessee shall maintain during the life of this Agreement liability insurance as shall protect Lessee against legal liability brought by third parties alleging one or more of the



following actions arising from work performed while providing services in the performance of this agreement.

- a. Dissemination of Information in Violation of Right of Privacy;
- b. Collecting Information in Violation of Right of Privacy;
- c. Theft and use of Information in Violation of Right of Privacy;
- d. Breach of privacy due to theft of data (e.g. credit cards, financial or health related data).

The minimum acceptable limits of liability to be provided by such insurance shall be \$1,000,000 each Incident/Aggregate.

4. WORKER'S COMPENSATION INSURANCE AND EMPLOYER'S LIABILITY INSURANCE. Applicable statutory Workers' Compensation Insurance as required by the Commonwealth of Virginia and Employer's Liability Insurance with a limit of at least \$1,000,000 per accident/injury.
5. PROPERTY INSURANCE. "All-risk" property insurance due to physical loss of, or damages to, real and personal property owned, maintained or operated by Lessee under this agreement. Coverage limits will be adequate to replace damaged and lost properties without diminution for depreciation, age or condition of such property. Such coverage includes, but may not be limited to DIC Blanket Fire and Extended Coverage, lightening, wind, hail, vandalism, malicious mischief, and aircraft.
6. AUTOMOBILE/MOTOR VEHICLE LIABILITY INSURANCE: The Lessee shall maintain Automobile Liability insurance with a limit of not less than \$ 5 million combined single limit; or, Bodily Injury \$2,000,000 each person, \$5,000,000 accident, and Property Damage \$100,000 each accident. Such insurance shall cover liability arising from any motor vehicle as defined by Commonwealth of Virginia laws and shall include coverage for owned, hired and non-owned motor vehicles, as well as uninsured and underinsured motorists. Coverage shall be written on an approved ISO Form for coverage in the Commonwealth of Virginia.

C. INSURANCE POLICIES/CERTIFICATE OF INSURANCE

Unless Lessee has elected to self-insure, as provided above, Lessee shall furnish (i) the City with two (2) copies of the policies, or a certificate(s) of

insurance evidencing policies, required in Paragraph XVII of this Agreement; and (ii) the City a certificate of insurance evidencing renewal of such coverage within 10 days of the effective date such renewal. All certificates shall be executed by a duly authorized representative of each insurer, showing compliance with the requirements of this Agreement. Throughout the term of this Agreement, Lessee shall, unless Lessee has elected to self-insure as provided above, furnish from time to time, and within five (5) business days of the City's request the original policies (including any current endorsements and any renewal or replacement policies) described herein and Certificates of Insurance evidencing such coverage. Failure of the City, and/or the City's designated agents for this Agreement, to (1) demand such certificates or other evidence of full compliance with these requirements, and/, or (2) identify a deficiency from evidence that is provided shall not be construed as a waiver of Lessee's obligation to maintain such insurance.

**D. SUBCONTRACTOR'S INSURANCE**

Lessee shall maintain owner-controlled programs ("OCP"), or require each of its Subcontractors performing on behalf of Lessee operations covered under this Agreement to take out, and maintain during the life of such subcontract, appropriate liability insurance coverage that will protect Lessee and the City against claims of injury and property damage that may arise from the contractor's work, including coverage for hazards of excavation, explosion and collapse for operations occurring within or on the Property. Each Sub-contractor shall furnish to Lessee two (2) copies of the policies, or certificates of insurance, evidencing such insurance. Lessee shall furnish at least one copy the Subcontractor's policies/certificate to the City. All liability policies will contain, when feasible, endorsements that designate Lessee as "Additional Named insured" or unless such coverage is not reasonably available via normal commercial insurance market sources. All liability policies will be written in an occurrence form unless otherwise specifically approved by Lessee.

**XVI. MISCELLANEOUS**

A. No Waiver. No waiver of any breach of any covenant or provision of this Agreement shall be construed to be a waiver of any other or subsequent breach of the same or any other covenant or provision. The failure of either Party to insist at any time upon strict observance or performance of any provisions of this Agreement, or to exercise any right or remedy in this Agreement, shall not impair any such right or remedy or be construed as a waiver or any relinquishment thereof.

B. Notices. Any notice permitted or required to be given by one Party to the other under this Agreement, unless otherwise specified under this Agreement, shall be given in writing by personal service, Federal Express, Airborne Express, or any other



similar form of courier service or delivery service, or mailing in the United States mail, postage prepaid, certified, return receipt requested, and addresses as set forth below, or such other address as may hereafter be provided in writing by a party hereto to the other from time to time.

To Lessee:

To City:        Marcus D. Jones, City Manager  
                    City of Norfolk  
                    810 Union Street, 1101 City Hall Bldg.  
                    Norfolk, Virginia 23510

With copy to: Bern ard A. Pishko, City Attorney  
                    City of Norfolk  
                    810 Union Street, 900 City Hall Bldg.  
                    Norfolk, Virginia 23510.

All notices and other communications under this Agreement shall be deemed properly served and to have been duly given on the date of delivery, if delivered personally on the Party to whom notice is given, or three (3) days after the date sent, if sent by one of the other methods set forth above.

C.        Binding on Successors. This Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and their respective successors and assigns.

D.        No Admission against Interest. Nothing in this Agreement shall be used, deemed, or construed to be an admission against the interest of either party in the event of litigation involving either of the Parties and a third party (or parties).

E.        Entire Agreement. This Agreement contains the entire agreement of the Parties hereto and supersedes any and all oral understandings between the Parties. All Exhibits attached to this Agreement are incorporated herein as if fully set forth within the text hereof.

F.        Amendment or Modification. This Agreement may only be amended by the Parties by an instrument in writing and signed by the Parties hereto indicating the intention to seek such amendment. Any modification or clarification of any nature whatsoever to an Exhibit shall not be valid or binding upon the Parties unless both Parties agree to such modification or clarification in writing. Any such amendment, modification or clarification must be made in accordance with the laws and bylaws governing the amendment, modification or clarification of City and Lessee agreements.

G. Interpretation. The section headings in this Agreement are for convenience only and shall not be used in its interpretation or considered part of this Agreement. Terms such as "herein," "hereof," "hereby," "hereunder," and "hereinafter" refer to this Agreement as a whole and not to the particular sentence, paragraph, or section where they appear unless otherwise specified. The term "including" shall be read to mean without limitation whether or not so indicated. The Parties participated jointly in the preparation of this Agreement and, therefore, no provisions shall be construed against either Party as drafter.

H. Force Majeure. The Parties agree that whenever a period of time is provided in this Agreement for either Party to perform any act or thing, such Party shall not be liable nor responsible for any delays due to an act of God, war, civil disturbance, fire, casualty, or similar occurrence; provided, that this provision shall not be construed to affect the responsibilities of such Party hereunder to do or perform such act or thing once such delays have been removed.

I. Governing Law and Venue. Except to the extent preempted by federal law, this Agreement shall be governed by the laws of the Commonwealth of Virginia. To the extent permitted by law, the parties agree that any action brought to enforce any right or obligation hereunder shall be subject to the exclusive jurisdiction of the courts of the Commonwealth of Virginia. Venue shall be in the City of Norfolk, Virginia.

J. Compliance with Federal Immigration Law. At all times during which any term of this Agreement is in effect, neither Lessee nor the City shall knowingly employ any unauthorized alien. For purposes of this section, an "unauthorized alien" shall mean any alien who is neither lawfully admitted for permanent residence in the United States nor authorized to be employed by either Title 8, section 1324a of the United States Code or the U.S. Attorney General.

K. Severability. All provisions of this Agreement shall be applicable only to the extent they do not violate applicable law, and are intended to be limited to the extent necessary so that they will not render this Agreement invalid, illegal, or unenforceable under any applicable law. If any provision of this Agreement shall be held invalid, illegal or unenforceable, then the validity, legality or enforceability of other provisions in this Agreement shall not be affected thereby but shall remain in full force and effect.

L. Relationship of the Parties. Neither Lessee nor the City shall be considered as the agent, joint venture, or partner of the other.

M. No Third Party Beneficiaries. Except as expressly set forth herein, this Agreement and each and every provision herein is for the exclusive benefit of the parties hereto and not for the benefit of any third party. Nothing herein shall be construed to create or increase any right in any third party to recover by way of damages or otherwise against either of the parties hereto.